Nos. 15-233, 15-255

IN THE

Supreme Court of the United States

THE COMMONWEALTH OF PUERTO RICO, *et al.*,
Petitioners,

—v.—

FRANKLIN CALIFORNIA TAX-FREE TRUST, *et al.*,
Respondents.

MELBA ACOSTA-FEBO, *et al.*,
Petitioners,

—v.—

FRANKLIN CALIFORNIA TAX-FREE TRUST, *et al.*,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE ASSOCIATION OF FINANCIAL GUARANTY INSURERS AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

MARC E. KASOWITZ
Counsel of Record
DANIEL R. BENSON
HON. JOSEPH I. LIEBERMAN (Ret.)
HON. CLARINE NARDI RIDDLE (Ret.)
ANDREW K. GLENN
KASOWITZ, BENSON, TORRES & FRIEDMAN LLP
1633 Broadway
New York, New York 10019
(212) 506-1700
mkasowitz@kasowitz.com

Attorneys for Amicus Curiae The Association of Financial Guaranty Insurers

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INTEREST OF *AMICUS CURIAE*[1]

The Association of Financial Guaranty Insurers ("AFGI") is the national trade association of the leading insurers and reinsurers of municipal bonds and asset-backed securities. AFGI's eleven members[2] are often called "monoline" insurers because their business is singularly focused on financial guaranty and related insurance. For decades, financial guaranty insurers have served an important function by insuring many of the nation's $4 trillion in municipal bonds, thereby resulting in municipalities borrowing at lower rates, achieving substantial cost savings and obtaining capital market access for the benefit of issuers and the communities they serve.

AFGI has a significant interest in the outcome of this case. In enacting the Puerto Rico Public Corporation Debt Enforcement and Recovery Act, 2014 P.R. Laws Act No. 71 ("Recovery Act"), the Commonwealth of Puerto Rico unilaterally sought to restructure or abrogate statutory and contractual terms of municipal bonds and their governing

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[1] All parties have consented to this filing. No counsel for a party has authored this brief in whole or in part, and no person other than *amicus*, its members, and its counsel has made a monetary contribution to the preparation of submission of this brief.

[2] The AFGI member firms are ACA Financial Guaranty Corporation, Ambac Assurance Corporation, American Overseas Reinsurance Company Limited, Assured Guaranty Corp., Assured Guaranty Municipal Corp., CIFG Assurance North America, Inc., Financial Guaranty Insurance Company, MBIA Insurance Corp., Municipal Assurance Corp., National Public Finance Guarantee Corp., and Syncora Guarantee.

documents—terms to which the Commonwealth and its public corporations agreed when they obtained billions of dollars of financing. Much of this financing has been guaranteed by AFGI members, who, at the request of the Commonwealth and in reliance on, and subject to, those contractual terms, provided the Commonwealth's bondholders with insurance policies for their bonds.

In striking down the Recovery Act, the District Court correctly held, and the Court of Appeals agreed, that the Recovery Act is unconstitutional on preemption grounds, finding that the Recovery Act would cause the "nullification" and "drastic impairment" of the plaintiff bondholders' rights and remedies under the trust agreement governing their bonds. Appendix to the Petition ("Pet. App.") 97a, 139a. So too, the Recovery Act would nullify and impair contractual and statutory rights and remedies of AFGI members who insured Commonwealth municipal bonds in reliance on and subject to their rights and remedies.

AFGI's interest in the outcome of this case also extends well beyond the debt issued by Puerto Rico and its municipalities. If Petitioners' flawed arguments in support of the validity of the Recovery Act were to succeed, the repercussions would extend far beyond Puerto Rico's borders. Not only would Puerto Rico be free to draft its own varying and *ad hoc* municipal bankruptcy laws, but under those same flawed arguments, even the *States* could claim the same right.

The prospect of States or territories enacting their own municipal bankruptcy laws would have grave

consequences on the monoline insurance industry, as well as on the municipal bond market as a whole. Upholding the Recovery Act would establish, and signal to monoline insurers and other creditors, that contractual terms with municipalities could be altered in unpredictable, inconsistent and self-serving ways. This would create a chilling effect on credit markets and increase the cost of financing to municipal borrowers (and, therefore, to taxpayers).

AFGI therefore submits this *amicus* brief to raise two considerations for the Court that are of significant importance to its members.

First, permitting territories (and States) to enact their own municipal bankruptcy laws outside Chapter 9 of the Bankruptcy Code would have significant adverse consequences on the $4 trillion municipal bond industry in general, and on the monoline insurance industry in particular. These adverse consequences ultimately will harm municipalities themselves, as well as their citizens and other stakeholders.

Second, Petitioners and supporting *amici* present a grossly inaccurate picture of the purported catastrophes that supposedly await Puerto Rican residents without the Recovery Act. This false portrayal of the potential impact of applying existing federal and Commonwealth law to the bond contracts at issue is an attempt to shift focus from the "straightforward" issue of federal preemption here (Pet. App. 32a) and from the dramatic negative effects that permitting laws like the Recovery Act would have on the nationwide municipal securities market.

SUMMARY OF ARGUMENT

This appeal presents an important opportunity for this Court to reaffirm the primacy of Congress in enacting uniform bankruptcy laws in accordance with the constitutional mandate of Article I, Section 8 of the United States Constitution, including, in particular, bankruptcy laws governing the crucial $4 trillion municipal bond market. In affirming the District Court's ruling that the Recovery Act is preempted by federal bankruptcy law, the Court of Appeals correctly applied the statutory language of, and Congressional intent behind, Section 903(1) of the Bankruptcy Code. Significantly for AFGI and its members, who participate in the market as "monoline" insurers for municipal bonds, the Circuit Court's proper application of the law averted a major dislocation in that critically important market.

Investors, issuers, and insurers in the nation's enormous municipal bond market depend on certainty and uniformity in the bankruptcy laws across the United States. It is this need for uniformity and predictability that led Congress to enact Section 903(1) of the Bankruptcy Code, which ensures that "[o]nly under a Federal law should a [municipality's] creditor be forced to accept [] an adjustment [to the municipality's obligation] without his consent." H.R. Rep. No. 79-2246, at 4 (1946). Congress recognized what AFGI's members and other market participants understand: uncertainty concerning bankruptcy regimes would decrease the willingness of investors and insurers to participate in the market by increasing their risk, leading them to demand higher returns that would ultimately drive

up municipal financing costs for significant, job-creating public projects. Some weaker credits might lose market access entirely.

Contrary to the strained reading proposed by Petitioners, Section 903(1) plainly prohibits Puerto Rico from creating bankruptcy laws for its own municipalities. The Recovery Act, which departs from Chapter 9 in key respects, is just such a law. If permitted to stand, the Recovery Act would not only eviscerate Congress's intent in enacting Section 903(1), but would also deal a significant blow to the proper functioning of the municipal bond market across the country. The Recovery Act unconstitutionally impinges on, and is therefore preempted by, federal law, and the courts below properly struck it down.

Ignoring the significant harm on the national municipal bond market from the Recovery Act's enactment, Petitioners and their *amici* posit that it is the *striking down* of the Recovery Act that will cause significant harm. They argue that, absent a federal bankruptcy law permitting involuntary restructuring of the debts of Puerto Rico's municipalities, the Puerto Rico legislature had jurisdiction by necessity to enact the Recovery Act to address its municipalities' relationship with its creditors. Petitioners and their *amici* claim that Puerto Rico municipalities would be subject to a "race to the courthouse," ultimately resulting in their inability to serve Puerto Rico's residents. Brief of The Puerto Rico Electric Power Authority ("PREPA Br.") at 6. Petitioners—and particularly their supporting *amici*—go so far as to argue that affirming the Court of Appeal's decision would unleash an unmitigated

disaster upon the citizens of Puerto Rico, including a "humanitarian crisis," with "rolling blackouts" and "inordinately high prices" leading to an "exodus of population" (in which Puerto Rico's residents are "forced to migrate" to the mainland, where they will then impose significant public costs on the States and the federal government), and ultimately a "death spiral" from which the Puerto Rico Electric Power Authority ("PREPA")—and possibly all of Puerto Rico—will never recover. PREPA Br. 12; Brief of Professors Clayton P. Gillette and David A. Skeel, Jr. ("Professor Br.") at 25, 30-31, 34; Brief of Puerto Rico Manufacturers Association ("PRMA Br.") at 16; Brief of Latino Justice PRLDEF ("Latino Justice Br.") at 16, 18-19.

Fortunately, this parade of horribles is entirely imagined. There will be no such results or repercussions. Apart from ignoring the fact that Congress clearly retained for itself—and did not delegate to the Commonwealth's legislature—the authority to enact a municipal bankruptcy scheme, the Petitioners' imagined doomsday scenario ignores the reality that PREPA's creditors themselves have strong incentives to avoid all of these theoretical harms, and that governing laws and applicable contractual provisions ensure that such harms do not occur. Because PREPA's bondholders do not have the ability to force the sale of PREPA's assets in order to satisfy their claims, PREPA's bondholders share the same incentive as PREPA's customers: keeping PREPA operating (and serving PREPA's customers) as efficiently as possible. Indeed, even appointment of a court-supervised receiver would not lead to the harms claimed by Petitioners and their *amici*, since Commonwealth law makes clear that the

duties of a receiver are limited to the operation and maintenance of PREPA's facilities. In fact, as recent examples of other municipalities benefitting from the appointment of a receiver demonstrate, even in the worst-case scenario, PREPA not only would continue to operate and provide services to the Commonwealth, but might take some or all of the steps identified by the District Court to address PREPA's financial stress.

Indeed, especially telling is the fact that none of the doomsday scenarios threatened by Petitioners and their *amici* have occurred in the more than eighteen months since PREPA first announced it was in serious financial distress in the summer of 2014. Instead, PREPA's creditors have entered into repeated forbearance agreements with PREPA, worked with PREPA to retain a Chief Restructuring Officer ("CRO") to operate more efficiently, and, most recently, entered into an agreement with PREPA to restructure and refinance PREPA's debt—an agreement that PREPA's CRO has described as "an example of the promising results that can be achieved when the commonwealth and its creditors work together," and which Petitioner Melba Acosta-Febo characterized as "the type of equitable burden sharing" that will ultimately "contribute to the Commonwealth's ongoing economic recovery."[3] Far from the overblown scenarios posited by Petitioners and their *amici*, creditors have engaged in good-faith negotiations for a consensual restructuring for the

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[3] Mary Williams Walsh, *Puerto Rico to Restructure Up to $5.7 Billion in Debt*, N.Y. TIMES (Sept. 3, 2015), *available at* http://tinyurl.com/hhwal8c.

benefit of all constituents, including the citizens of Puerto Rico.

The Recovery Act is an unconstitutional exercise of power by the Commonwealth. It violates the letter and intent of federal law in a misguided effort to address a problem for which there are existing solutions. The existing legal and contractual framework governing the relationship between PREPA and its creditors has been, and will continue to be, valid and effective in addressing the very concerns Petitioners have raised. Moreover, reaffirming that individual States and territories may not implement their own individualized frameworks for municipal bankruptcies will go a long way toward reassuring the municipal bond market, and ensuring that that market remains available, affordable, and liquid for municipalities around the country. The Circuit Court's opinion should be affirmed.

ARGUMENT

I. PERMITTING TERRITORIES (AND STATES) TO ENACT THEIR OWN MUNICIPAL BANKRUPTCY LAWS WOULD HAVE SIGNIFICANT NEGATIVE CONSEQUENCES ON THE $4 TRILLION MUNICIPAL BOND INDUSTRY

The arguments of Petitioners and their *amici* are meritless under governing federal law and contrary to Congress's intent, and, if accepted and carried to their logical and inescapable conclusion, would permit not only Puerto Rico, but all States and territories, to enact municipal bankruptcy laws

inconsistent with the Chapter 9 system. This legally impermissible result would cause immeasurable and unjustified harm to the nation's $4 trillion municipal bond market, which finances many of the most important projects and services provided by the nation's municipalities, including those of Puerto Rico.

A. The Significance of the Municipal Bond Market

As the Securities & Exchange Commission recently stated, "[t]he municipal securities market is critical to building and maintaining the infrastructure of our nation. State and local governmental entities issue municipal securities to finance a wide variety of public projects, to provide for cash flow and other governmental needs, and to finance non-governmental private projects." SEC, *Report on the Municipal Securities Market* (July 31, 2012), at p.i, *available at* http://tinyurl.com/bs4aevf. As of the writing of that report, $3.7 trillion in municipal bonds were outstanding, more than three-quarters of which were held directly or indirectly by individuals. *Id.* at pp.i, v.

The monoline insurance companies that comprise AFGI's membership play an important role in the municipal bond market. Because the monoline insurers historically have had higher credit ratings than the municipal borrowers whose bonds they insure, municipalities have obtained a lower cost of financing than they would if their bonds were not insured. *See* Frank Moore, *Does Bond Insurance Make Sense For You?*, GOV. FIN. REV. (Aug. 2002) at p.16. In this way, municipal borrowers—and the

taxpayers—have saved more than $40 billion in interest costs since the industry's inception in 1971. *See The Association of Financial Guaranty Insurers: The Basics*, *available at* http://afgi.org/who-fact.htm.

B. The Importance of Predictability and Uniformity in the Municipal Bond Market

The key to the municipal bond industry's ability to provide financing for important public projects is the ability of market participants to predict at the time the bonds are issued the likelihood and consequences of the borrower's default based on the credit quality of the issuer and the contractual and legal remedies and protections available to investors. The "rules of the game" must be consistent and evenly applied, and understood in advance. Here, those rules are the municipal bankruptcy rules set by Congress, which acts under a Constitutional mandate to enact uniform bankruptcy laws, U.S. Const. art. I, § 8, cl. 4, and has provided for such a uniform law: the Chapter 9 bankruptcy framework, except in those States or territories in which the State (or, in the case of Puerto Rico and the District of Columbia, Congress) has not authorized Chapter 9. If those who purchase or insure municipal bonds cannot rely on the contractual covenants and obligations to which they and their municipal counterparties agreed at the time the bonds were issued—in particular, the process and availability of remedies upon a default—it will have a chilling effect on the provision of credit. The natural result will be an increase in costs, both to monolines and to the municipalities whose credit they enhance.

If bondholders and insurers must reevaluate their extension of credit on the basis that the longstanding obligations of issuers might be abrogated through the retroactive and unilateral imposition of state laws that impair them, credit will become more expensive for all government issuers. The consequences would be enormous, as the increased costs of issuing municipal debt either would be borne by the nation's taxpayers, or would lead municipalities to forgo key infrastructure projects in the face of unaffordable financing costs. Indeed, the Recovery Act led "some economists [to worry] that Puerto Rico could lose access to the bond market, on which it relies to finance ongoing government operations," and in fact Puerto Rico has been unable to access the capital markets since the Recovery Act was passed.[4] And the consequences of Puerto Rico's efforts to evade its debt have not been limited to Puerto Rico. For example, in part as a reaction to such efforts, Chicago's public schools recently were forced to offer their debt at a steeper discount than any municipality since the financial crisis.[5]

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[4] *See* Reid Wilson, *Looming Puerto Rico debt deadlines have investors nervous*, WASH. POST (July 24, 2014), *available at* http://tinyurl.com/z6fvwxf; Nick Brown & Tom Hals, *Puerto Rico debt crisis headed for U.S.-style bankruptcy resolution*, REUTERS (July 23, 2014), *available at* http://tinyurl.com/hjtbkyk (Recovery Act "shocked investors. Prices on PREPA bonds and those issued by its sister corporations plunged, with some PREPA debt falling by nearly 50 percent in a matter of days. Credit ratings agencies, which had already cut most Puerto Rico bonds to below-investment grade earlier in the year, slashed them deeper into junk territory, saying the law raised questions about the administration's commitment to honoring its debts").

[5] *See* Brian Chappatta & Elizabeth Campbell, *Chicago Schools Pay Bigger Bond-Market Penalty Than Puerto Rico*,

The possibility of this outcome was well understood by Congress, and was precisely what it sought to avoid, when it preempted the States and territories from enacting their own municipal restructuring laws by enacting Section 903(1) and its predecessor, Section 83(i).

C. The Statutory Framework

Since 1937, federal statutory law has governed the manner in which the municipalities of Puerto Rico, along with other territories and States, could engage in a non-consensual restructuring of debts. *See* Act of Aug. 16, 1937, ch. 657, §§ 81-82, 83(a), 50 Stat. 653. In 1946, Congress enacted Section 83(i) of the Bankruptcy Act, which explicitly preempted and prohibited States from enacting any state municipal bankruptcy laws that would bind non-consenting creditors. *See* Act of July 1, 1946, ch. 532, sec. 1, § 83(i), 60 Stat. 409, 415; 11 U.S.C. § 903(1). Section 83(i), which later became Section 903(1) of the Bankruptcy Code, directly applied to Puerto Rico, prohibiting it from binding non-consenting creditors to a restructuring of municipal debts. In enacting Section 83(i) in 1946, Congress explained that:

> a bankruptcy law under which bondholders of a municipality are required to surrender or cancel their obligations should be uniform throughout the 48 States, as the bonds of almost every municipality are widely held. *Only*

BLOOMBERG (Feb. 5, 2016), ***available at*** http://tinyurl.com/hqhvz8w ("The Chicago Board of Education's sale price indicates that investors burned by Puerto Rico have learned a lesson.").

> *under a Federal law should a creditor be forced to accept such an adjustment without his consent.*

H.R. Rep. No. 79-2246, at 4 (1946) (emphasis added). More than thirty years later, Congress reaffirmed these principles by retaining Section 83(i) in the new Bankruptcy Code; Congress recognized that removing the provision "would 'permit all States to enact their own versions of Chapter IX,' ... which would frustrate the constitutional mandate of uniform bankruptcy laws." S. Rep. No. 95-989, at 110 (1978).

In 1984, Congress revised the Bankruptcy Code to eliminate the ability of municipalities in Puerto Rico and the District of Columbia to seek relief under Chapter 9 by excluding Puerto Rico and the District of Columbia from the definition of "State" for the purpose of "defining who may be a debtor under chapter 9," but including Puerto Rico and the District of Columbia as "States" for all other purposes. 11 U.S.C. § 101(52).

Thus, municipalities of Puerto Rico and the District of Columbia cannot be Chapter 9 debtors, but those federally-supervised jurisdictions remain subject to Section 903(1) of the Bankruptcy Code, which prohibits any "State law prescribing a method of composition of indebtedness of [a] municipality" that "bind[s] any creditor that does not consent to such composition." 11 U.S.C. § 903(1). With the exception of the limited Section 101(52) exclusion described above, which the Circuit Court correctly held was inapplicable here (Pet App. 16a-17a), under the Bankruptcy Code, Puerto Rico is a "State," and

its instrumentalities (such as PREPA) are "municipalities." 11 U.S.C. § 101(40) & (52). By its terms, therefore, Section 903(1) prohibits Puerto Rico from enacting a law for the restructuring of PREPA's debt, and has done so continuously since 1946, even before PREPA issued the bonds held by its creditors today.

D. Petitioners' Position Would Lead to Absurd Outcomes and Significant Adverse Effects on the Municipal Bond Market

The fundamental question in this appeal is whether Section 903(1) should be read to permit what it expressly bars. The question is not whether Congress in 1984 intended to preclude Puerto Rico from enacting its own municipal bankruptcy law by excluding Puerto Rico from the scope of Chapter 9 (*cf.* Brief of Petitioners Melba Acosta-Febo *et al.* ("GDB Br.") at 42-43), but whether Congress in 1984 intended to lift the *existing*, 40-year-old restriction on Puerto Rico's ability to enact its own bankruptcy laws, and give Puerto Rico *carte blanche* to enact such laws for the adjustment of its municipalities' debt—regardless of the fairness of those laws, their consistency with the federal bankruptcy scheme, or their profound effects on the trillion-dollar market for municipal bonds.

The answer to this question is clear. Neither Petitioners nor their *amici* provide any coherent explanation why Congress would provide Puerto Rico with the unfettered ability to treat its municipalities' creditors differently from (and, in this case, worse

than) those of every State of the Union.[6] Nor do Petitioners make any attempt to demonstrate that their interpretation is supported by the legislative history of the 1984 amendment to the Bankruptcy Code. And they do not explain how it would further the goals of the Bankruptcy Code, including that "[o]nly under a Federal law should a [municipality's] creditor be forced to accept [] an adjustment [to the municipality's obligation] without his consent." H.R. Rep. No. 79-2246, at 4 (1946). Instead, as the Court of Appeals correctly recognized, the only reasonable reading of Congress's 1984 revision of the Bankruptcy Code is that Congress intended to, and did, reserve to *itself* the right to decide whether, if a fiscal emergency arose, it should authorize a framework for reorganizing municipal debts for Puerto Rico and the District of Columbia. Pet. App. 47a.[7]

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[6] Indeed, Petitioners' argument that the 1984 amendment gave Puerto Rico the unfettered ability to provide non-uniform bankruptcy protections to its municipalities is directly contradicted by the reaction of the marketplace to the change in the law. In the years following the 1984 amendment, the total debt of Puerto Rico's public corporations increased exponentially. *See* Government Development Bank of Puerto Rico, *Gross Public Debt of Puerto Rico* (June 30, 2008), *available at* http://tinyurl.com/hnnz9wr; D. Andrew Austin, CONG. RESEARCH SERV., R44095, *Puerto Rico's Current Fiscal Challenges*, Figure 2 at p.5 (Sept. 25, 2015), *available at* http://tinyurl.com/ha5efdb. Plainly, investors would not have *increased* their extension of credit to Puerto Rico's municipalities after the 1984 amendment if they believed that amendment gave Puerto Rico the unfettered ability to restructure and/or impair their investments.

[7] Indeed, Congress exercised this exact power in 1995 in response to a looming fiscal crisis in the District of Columbia. Rather than modify Chapter 9 to permit the District to seek

Indeed, Puerto Rico is currently seeking just such a framework from Congress,[8] and in evaluating Puerto Rico's request for the extension of Chapter 9 to its municipalities, Congress has exercised the precise function that it reserved for itself in 1984: determining how it will address the issue of municipal financial distress in the nation's territories. A key element of the proposals currently in active consideration by a number of Congressional committees is the appointment of a federal control board, which—like the one used to much success in the District of Columbia—would exercise oversight over Puerto Rico's finances and help Puerto Rico's municipalities emerge from their current fiscal distress.[9] Thus, the current debate in Congress over Puerto Rico's future is not, as Petitioners claim, representative of a "no-man's land." GDB Br. 1; Commonwealth Br. 1. Instead, this is the

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bankruptcy protection, Congress "wrested" the "day-to-day management of most District functions ... from city officials and placed [it] in the hands of a five-member federally appointed panel." Mike DeBonis, *After 10 years, D.C. control board is gone but not forgotten*, WASH. POST (Jan. 30, 2011), *available at* http://tinyurl.com/jyqdfsf.

[8] *See* Michael Corkery & Mary Williams Walsh, *Governor of Puerto Rico Warns of Looming Default Without Bankruptcy Plan*, N.Y. TIMES (Dec. 16, 2015), *available at* http://tinyurl.com/qgeorvr.

[9] *See* Jack Casey, *House Committee Members Working on Oversight Board Bill for P.R.*, BOND BUYER (Feb. 2, 2016), *available at* http://tinyurl.com/zfxsbqj. Although the details have not yet been finalized, Congress may grant such a board broad powers and can determine how it wants the Board to function or operate, including whether it can or should recommend that Congress provide some form of Chapter 9 relief.

appropriate deliberative process for a federal resolution to restructure the Commonwealth's debts required by Section 903(1).

Petitioners' answer to this is that, in enacting Section 101(52) in 1984, Congress exempted Puerto Rico and the District of Columbia from this structure, and instead freed them—unlike the 50 States—to each provide their own terms for the restructuring of distressed municipal debt. But to accept Petitioners' reading, one would not only have to ignore the plain language of Section 903(1), but would also have to accept—against all evidence to the contrary—that while Congress said it intended to restrict State action in connection with municipal bankruptcies, it in fact simultaneously acted *sub silentio* to free Puerto Rico and the District of Columbia from all such restrictions.

Indeed, the widespread consequences of Petitioners' arguments are exposed in Petitioners' and their *amici's* own briefs. As an initial matter, Petitioners' position—regardless of whether it is based on Congress's choice to place Section 903(1) in Chapter 9, or an absurdly restrictive view of the definition of certain terms used in Section 903(1)—necessarily would mean that, notwithstanding governing federal law, Puerto Rico and the District of Columbia would be free to enact their own restructuring legislation. As demonstrated by the Recovery Act, because local politicians may have strong short-term (and short-sighted) incentives to shed municipal debt, *see, e.g.*, Amy B. Monahan, *State Fiscal Constitutions and the Law and Politics of Public Pensions*, 2015 U. ILL. L. REV. 117, 128-29 (2015) (describing politicians' tendency to

"irrationally favor current needs over future needs" when it comes to public funds), treatment of creditors under such legislation likely would be not only inconsistent with, but also vastly inferior to, that provided under the Bankruptcy Code.[10]

But even more importantly, the absurdity of Petitioners' reading of Section 903(1) is highlighted by the fact that, if Petitioners are correct, the patchwork of individualized and disparate restructuring laws would extend not only to Puerto Rico and the District of Columbia, but to the *States* themselves—directly contrary to Congress's express intentions. Petitioners and their *amici* claim that, "[b]y its literal terms, section 903 [] does not apply unless a Chapter 9 case has actually been filed." Professor Br. 10-11; *see also* GDB Br. 32. Since Puerto Rico's municipalities cannot file for

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[10] Indeed, notwithstanding Petitioners' assertions to the contrary (GDB Br. 14), the Recovery Act is just such a statute. Among other things, the Recovery Act, unlike Chapter 9, (i) permits a municipal debtor to use or transfer its revenues without providing its creditors adequate protection, even if those creditors have a lien on those revenues (Recovery Act §§ 129, 207, 323, 324); (ii) allows a debtor to obtain "priming" senior liens without providing adequate protection to existing lienholders (Recovery Act §§ 206, 322); and (iii) prohibits "*ipso facto* clauses" without any exception for derivative contracts (Recovery Act §§ 205(c), 325(a)). *See also, e.g.*, Lorraine S. McGowen, *Puerto Rico Adopts a Debt Recovery Act for Its Public Corporations*, 10 PRATT'S J. BANKR. L. 453, 456-57 (Sept. 2014) ("While adopting certain provisions from the Bankruptcy Code, the [Recovery] Act omits several key provisions that are favorable and protective of creditors' rights. These rights ensure that the burdens of a restructuring are shared amongst all stakeholders including the debtor, its creditors and other parties. Thus, the [Recovery] Act creates even more instability and uncertainty for creditors and stakeholders.").

bankruptcy protection, Petitioners argue, Section 903(1) simply does not apply to them. *See id.* No such "literal terms" exist in Section 903, but if the Petitioners and their *amici* were correct that Section 903(1)'s bar on State bankruptcy laws does not apply unless and until a Chapter 9 case is actually filed, States could exempt themselves from Section 903 merely by refusing to authorize Chapter 9 filings by their municipalities pursuant to 11 U.S.C. § 109(c)(2).

Petitioners' argument thus proves far too much: their reading would permit States *at their option* to pass their own bankruptcy laws in lieu of Chapter 9. This unquestionably would be an absurd result, contrary to Congress's express intent to limit States' ability to enact their own municipal bankruptcy laws.

Moreover, a ruling that permits the nation's States and territories to enact their own conflicting sets of municipal bankruptcy laws would be incredibly harmful to the municipal bond market, and result in the precise harms that Congress was seeking to prevent in 1946, when it enacted Section 83(i) to ensure that "[o]nly under a Federal law should" a bondholder of a municipality "be forced to accept [] an adjustment [to the municipality's obligations] without his consent," H.R. Rep. No. 79-2246, at 4 (1946); and then again in 1978, when it recodified that prohibition as Section 903(1) in order to avoid "frustrat[ing] the constitutional mandate of uniform bankruptcy laws," S. Rep. No. 95-989, at 110 (1978). Congress clearly intended Section 903(1) to preempt local municipal bankruptcy laws in the States, and the Recovery Act is an unconstitutional

encroachment into an area that Congress expressly prohibited its political subdivisions from reaching.

II. PETITIONERS AND THEIR *AMICI* PRESENT A GROSSLY INACCURATE PICTURE OF THE CATASTROPHES THAT PURPORTEDLY AWAIT THE CITIZENS OF PUERTO RICO WITHOUT THE RECOVERY ACT

In support of Puerto Rico's appeal, Petitioners and their *amici* paint an apocalyptic picture of Puerto Rico if the Court of Appeals' decision is affirmed. They argue that the result will include a "humanitarian crisis" (PREPA Br. 12), with the territory locked in a "death spiral" of "inordinately high prices" and depopulation (Professor Br. 25, 30), as well as unpaid employees and "rolling blackouts" (PREPA Br. 6). According to PREPA, this chaos and catastrophe is the inevitable and foreseeable result of the "chaotic free-for-all" between creditors that would occur absent the Recovery Act. PREPA Br. 31. Fortunately, each and every element of the parade of horribles proposed by Petitioners and their *amici* is manifestly and objectively inaccurate—contradicted by the actual behavior of Puerto Rico and its creditors, by governing law and applicable contractual provisions, and by logic and common sense.[11]

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[11] Most of Petitioners' doomsday allegations concern the Commonwealth, and therefore are not germane because the Recovery Act applies only to PREPA and a small number of other public corporations. Not only would the debt of the Commonwealth and the public corporations not covered by the Recovery Act remain outstanding even if the Recovery Act were reinstated, but these entities could face significant adverse consequences from a restructuring by the public corporations

A. The Recovery Act is Unnecessary to Maintain PREPA's Operations

The case of PREPA—whose fiscal distress was one of the primary drivers of the Recovery Act—makes clear that the enactment of the Recovery Act was not a reasonable and necessary attempt to facilitate a fair and orderly restructuring of debts, but apparently was instead an effort by Puerto Rico to provide its municipalities with more leverage in negotiations with creditors by abrogating certain of the creditors' rights and remedies. This leverage evidenced itself when, after the enactment of the Recovery Act, PREPA's bond prices plunged and its credit rating was slashed, even as negotiations between PREPA and its creditors continued.[12]

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eligible for relief under the Recovery Act. For example, the Government Development Bank of Puerto Rico ("GDB"), which holds almost $4 billion in cash deposits of the Commonwealth and its subdivisions, is owed $2 billion by the Puerto Rico Highways and Transportation Authority ("PRHTA"), a Recovery Act municipality. GDB, *Special Liquidity Update* (Oct. 17, 2014), *available at* http://tinyurl.com/jyehfqp. The GDB has disclosed that a Recovery Act filing by PRHTA or other public corporations could have significant adverse effects on the GDB, and, as a result, the entire Commonwealth. *Id.* at p.3 ("Although neither the Commonwealth nor GDB is currently eligible to seek relief under the Recovery Act, certain public corporations that have outstanding loans with GDB may seek relief under the Recovery Act, which may have material adverse effects on GDB's financial and liquidity position.").

[12] *See* Brown & Hals, *supra* n.4; *see also* Michelle Kaske, *Puerto Rico Supreme Court Hearing Raises Negotiations Risk*, BLOOMBERG (Dec. 7, 2015), *available at* http://tinyurl.com/z3cwz4u (analyst noting that this Court's decision to grant certiorari provides Puerto Rico "an additional stick with which to threaten[] creditors").

The Recovery Act was neither reasonable nor necessary; absent the Recovery Act, PREPA could have taken several steps to alleviate its fiscal distress, chief among which was to "modestly raise its rates." Pet. App. 138a-139a.[13] Currently, PREPA's electricity rates are no higher than, and in many cases are much lower than, those in other tropical islands, such as Hawaii and the U.S. Virgin Islands.[14] Indeed, PREPA's rates have fallen dramatically in recent years due to falling oil prices, and PREPA's rates now are comparable even to some mainland U.S. states.[15] But despite charging rates comparable to those charged in many states—and despite the express statutory and contractual obligations of PREPA to maintain rates that are sufficient to cover its debt service requirements, and of the Puerto Rico Energy Commission to "guarantee" that this is so—PREPA has not raised its base rates in more than 25 years,

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[13] As the District Court noted, PREPA also could (i) collect more than half a billion dollars owed by the Commonwealth; (ii) reduce subsidies paid by PREPA to other municipalities; (iii) cut costs and correct inefficiencies; and (iv) negotiate with its creditors to restructure its debts on a voluntary basis—especially since "[t]he Recovery Act was passed before any meaningful attempt to engage in such negotiations." Pet. App. 138a-139a.

[14] *See* U.S. ENERGY INFO. ADMIN., *Hawaii and U.S. Territories aim to increase fuel diversity with LNG imports* (Aug. 19, 2014), *available at* http://tinyurl.com/zyx8maq.

[15] *Compare* U.S. ENERGY INFO. ADMIN., *Puerto Rico Territory Profile and Energy Estimates* (Jan. 21, 2016), *available at* http://tinyurl.com/z2gahsq (Residential Electricity Price estimated to be 19.29 cents/kWh) *with* U.S. ENERGY INFO. ADMIN., *Electric Power Monthly* (Jan. 26, 2016), *available at* http://tinyurl.com/zuzzq5z (Residential Electricity Price estimated to be 20.98 cents/kWh in Connecticut, 19.24 cents/kWh in Rhode Island and 20.19 cents/kWh in Alaska).

and as a result its current rates are insufficient to meet its obligations to creditors.[16]

Nevertheless, PREPA has taken *certain* of the steps identified by the District Court independent of the Recovery Act. As the District Court recognized, the best path to a financial restructuring for PREPA (and other municipalities in the Commonwealth) is a negotiated outcome that recognizes all parties' rights and obligations. Indeed, such negotiations, which started before the Recovery Act was invalidated by the District Court and continued after the Court of Appeals affirmed, have borne fruit. PREPA and its creditors have reached a restructuring plan that, according to PREPA's CRO, provides "an example of the promising results that can be achieved when the commonwealth and its creditors work together."[17]

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[16] *See* Energy Transformation and Relief Act, 2014 P.R. Laws Act No. 57 § 6B; P.R. Laws Ann. Tit 22 § 196(l); Trust Agreement § 502, JA 608-11; Mary Williams Walsh, *Debt Plan Still Fragile for Puerto Rico Utility, Lawmakers Are Told*, N.Y. TIMES (Jan. 12, 2016), *available at* http://tinyurl.com/zwxczv6 (noting that, although "[t]he law required [PREPA] to set rates high enough to cover its costs, including borrowing costs," "that did not happen"). Notably, a key element of PREPA's debt restructuring agreement with its creditors is PREPA's commitment to raise its rates. *See id.*

[17] Walsh, *supra* n.3; *see also* Robert Slavin, *Puerto Rico Touts PREPA Reform to Investors*, BOND BUYER (Feb. 11, 2016) *available at* http://tinyurl.com/zx34e4a (statement by Puerto Rico governor that legislation required by deal "paves the way for over $2 billion in capital investments to our current electricity infrastructure, significantly reduces its debt stock, modernizes operations, de-politicizes governance, improves client service efforts, and promotes a safer work environment for our public employees").

PREPA's fiscal troubles emerged in July 2014, after rating agencies downgraded PREPA's bonds following enactment of the Recovery Act.[18] In response, certain of PREPA's bondholders and other creditors, along with the monoline insurers that guaranteed some of PREPA's bonds, entered into a series of forbearance agreements with PREPA.[19] During the same period, PREPA's creditors and monoline insurers provided PREPA with substantial funding and liquidity relief, often in the form of bond purchases, to enable PREPA to focus on negotiating a long-term solution for its financial distress.[20] In exchange for its creditors' forbearance, PREPA installed a Chief Restructuring Officer ("CRO") to "review[] all of PREPA's business processes" and help PREPA "achieve fiscal stability."[21] PREPA's CRO has made a number of proposals for PREPA to modernize its operations, increase efficiency and cut

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[18] *See* Robert Slavin, *PREPA Downgraded as Payment Comes Due*, BOND BUYER (July 1, 2014), *available at* http://tinyurl.com/jdentor.

[19] *See* Robert Slavin, *PREPA Bondholder Expects Favorable Restructuring*, BOND BUYER (Mar. 23, 2015), *available at* http://tinyurl.com/lqkj8wo.

[20] *See* Mary Williams Walsh, *Puerto Rico, Running Short of Cash, Misses a Debt Service Deadline*, N.Y. TIMES (July 15, 2015), *available at* http://tinyurl.com/pvhlprf; Mary Williams Walsh, *Puerto Rico Utility Reaches Deal With Bond Insurers in Effort to Avoid Default*, N.Y. TIMES (Dec. 24, 2015), *available at* http://tinyurl.com/gpuw5zn.

[21] Michael Aneiro, *Puerto Rico PREPA Utility Names Chief Restructuring Officer*, BARRON'S (Sept. 4, 2014), *available at* http://tinyurl.com/hlcu34u.

costs.[22] After the Recovery Act was invalidated, rather than professing fear for the future of PREPA, PREPA's CRO stated that she was "optimistic that we will come to a consensual plan with the [forbearing] bondholders that will let PREPA operate efficiently and pay the debts when they come due."[23]

And that is precisely what has occurred. In September 2015—two months after the Court of Appeals confirmed that the Recovery Act is preempted by the Bankruptcy Code—PREPA reached a preliminary agreement with its creditors.[24] In December 2015, that preliminary agreement became permanent, as PREPA and its creditors entered into a restructuring support agreement ("RSA") that, subject to certain conditions, will allow PREPA to refinance its debt on consensual terms—an agreement that was recently affirmed, and could "serve as a model for other branches of the Puerto Rican government."[25] And while PREPA complains

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[22] *See* Robert Slavin, *Prepa Releases Restructuring Progress Report*, BOND BUYER (Dec. 16, 2014), *available at* http://tinyurl.com/jdcoltv.

[23] Robert Slavin, *PREPA Restructuring Officer Optimistic on Consensual Plan*, BOND BUYER (Apr. 9, 2015), *available at* http://tinyurl.com/z4ewr5h.

[24] Walsh, *supra* n.3.

[25] *See* Mary Williams Walsh, *Puerto Rico Utility and Bondholders Agree to Keep Working on a Deal*, N.Y. TIMES (Dec. 18, 2015), *available at* http://tinyurl.com/zsgxun2; *see also* Michelle Kaske, *Puerto Rico Electric Renews Debt Restructuring Agreement*, BLOOMBERG (Jan. 28, 2016), *available at* http://tinyurl.com/zdd4ser (statement of PREPA's CRO that agreement "reflect[s] the mutual understanding among Prepa and its key creditors about the importance of Prepa's financial restructuring and comprehensive

that this agreement is subject to "highly uncertain" conditions precedent (PREPA Br. 4-5), the same could be said with any major restructuring, including those crafted during bankruptcy proceedings.[26] More importantly, Puerto Rico's legislature last week approved, and the governor signed into law, legislation designed to implement the restructuring, rendering final consummation of the RSA even more likely than before.[27]

Thus, far from the disarray Petitioners portray, in reality there has been a value-enhancing and productive negotiating process—and the only realistic hope for Puerto Rico and its utilities to put an end to their current financial woes. Notwithstanding Petitioners' continuing dire predictions about a "race to the courthouse" (GDB Br. 25), "entailing perhaps hundreds of lawsuits, each imperiling PREPA's remaining assets and its ability to provide power" (PREPA Br. 6), to date not a single lawsuit has been filed against PREPA by any of its creditors. This is no surprise, since bondholders—who hold liens only on PREPA's revenues, and not on its assets—cannot foreclose on or force the sale of PREPA's energy-producing assets

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transformation," which "if implemented ... will have a positive, lasting impact on its finances, operations and culture").

[26] *See, e.g.*, Jad Mouawad, *Federal Judge Approves American Airlines' Plan to Exit Bankruptcy*, N.Y. TIMES (Sept. 12, 2013), *available at* http://tinyurl.com/k4us55s (approving bankruptcy plan "contingent on Justice Department approval" of related merger).

[27] *See* Alex Lopez, *Puerto Rico Approves Electric Utility Restructuring Bill*, BLOOMBERG (Feb. 17, 2016) http://tinyurl.com/glrahl5.

or otherwise put PREPA out of business. As a result, bondholders have a strong incentive to ensure that PREPA continues to operate and earn revenues through the sale of energy to Puerto Rico's citizens, since, if PREPA closed its doors, its bondholders would likely receive almost nothing on their investment.[28]

In light of this legal framework, it is not surprising that PREPA and its creditors have engaged in the same type of "orderly restructuring process" that Petitioners claim they were denied when the Recovery Act was found to be unconstitutional. *See* GDB Br. 25.[29] Thus, Petitioner's claim

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[28] Another reason that there has been—and will be—no "race to the courthouse" is that both Puerto Rico law and the Trust Agreement governing PREPA's bonds both require that the exercise of remedies against PREPA be "for the equal benefit and protection of all holders of bonds similarly situated." P.R. Laws Ann. Tit 22 § 208(a); Trust Agreement § 808. For both of these reasons, claims by the Commonwealth and PREPA that "weaker creditors" are left "at the mercy of more powerful creditors in a chaotic free-for-all" (Commonwealth Br. 31), or that PREPA will be "exposed to highly destructive disorganized action by its creditors" (PREPA Br. 5), are simply untrue.

[29] Nor has there been any "race to the courthouse" in connection with any of Puerto Rico's *other* municipalities. Although certain Commonwealth instrumentalities have defaulted on payments to their creditors, no litigation has resulted from these defaults. *See* Mary Williams Walsh, *Nonpayment on Bonds Would Have Consequences for Puerto Rico*, N.Y. TIMES (July 29, 2015), *available at* http://tinyurl.com/ndvgfzd. As for the only pending lawsuit identified by Petitioners, commenced by certain monoline insurers, that case—which hardly constitutes a "barrage of creditor lawsuits" that "threaten the ability of [Puerto Rico's] public corporations to operate" (GDB Br. 9)—merely challenges as unconstitutional the Commonwealth's diversion to certain of its creditors money

that "the absence of a statutory framework governing debt restructuring" will render it "exceedingly difficult for the Commonwealth's public corporations to negotiate a solution to their debt problems" (GDB Br. 8) is simply false.

Indeed, if anything, it is the possibility of PREPA seeking bankruptcy relief that threatens to derail the consensual process in which PREPA and its creditors have engaged.[30] Derailing PREPA's consensual negotiations with its creditors in favor of the uncertain outcome of bankruptcy proceedings would be particularly problematic for PREPA and its constituents, since, as PREPA's own CRO recently admitted to Congress, PREPA likely would not "get a better economic deal" under Chapter 9 than it has

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earmarked for other of its creditors. *See* Aaron Kuriloff, *Bond Insurers Sue Puerto Rico for Redirecting Debt-Payment Funds*, WALL ST. J. (Jan. 8, 2016), *available at* http://tinyurl.com/jh9cd2d.

[30] For example, in late November 2015, based on its hope that Congress would provide it with bankruptcy relief during the 2015 legislative session, PREPA walked away from a "framework business agreement" it had reached with certain of its creditors and monoline insurers. Jack Casey, *Assured Guaranty Blasts Treasury's Stance on Puerto Rico*, BOND BUYER (Dec. 15, 2015), *available at* http://tinyurl.com/hgmahdm. Ultimately, PREPA entered into a permanent restructuring agreement with its creditors and monolines only after—in fact, on the very same day as—its efforts to obtain such relief failed. *See* Corkery & Walsh, *supra* n.8; Nick Brown & Megan Davies, *Puerto Rico utility in tentative agreement to restructure debt: sources*, REUTERS (Dec. 18, 2015), *available at* http://tinyurl.com/zba88p5; *cf.* PREPA Br. 12 n.8.

obtained under the "fair and balanced" agreement it has struck with its creditors.[31]

Instead of triggering the "race to the courthouse" predicted by Petitioners and their *amici* (GDB Br. 25; Commonwealth Br. 31; PREPA Br. 6), PREPA's distress triggered a good-faith negotiation between PREPA and its creditors that has resulted in proposals for transforming PREPA into a more efficient utility; instead of leading to "rolling blackouts" and a "death spiral" (PREPA Br. 12; Professor Br. 25, 30-31, 34; PRMA Br. 16; Latino Justice Br. 16, 18-19), the distress led to a thorough review of PREPA's operations that has the potential to provide substantial benefits not only to PREPA and its creditors, but to the citizens of Puerto Rico, who will ultimately have a more effective energy provider.

B. Negotiations Based on the Pre-Existing Contractual and Statutory Framework Provide the Proper—and Best—Framework for Addressing Puerto Rico's Financial Difficulties

Good-faith negotiations represent the best way for a municipality and all of its stakeholders, including

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[31] *See Exploring Energy Challenges and Opportunities Facing Puerto Rico: Hearing Before the Subcomm. on Energy and Mineral Resources*, 114th Cong. 18, 27 (2016) (Testimony of Lisa Donahue). Perhaps for that reason, PREPA and its creditors have agreed in the RSA that their existing restructuring agreement will remain in place even if the Recovery Act were reinstated—demonstrating again that consensual agreements negotiated outside of bankruptcy are often more fair and favorable to all parties than the results of the bankruptcy process. *See* Restructuring Support Agreement § 2(c) (Dec. 23, 2015), *available at* http://tinyurl.com/j5wymy5.

its customers and creditors, to reach a mutually-beneficial compromise that maximizes the recovery to creditors while at the same time ensuring the viability of the municipality.[32]

But even if negotiations between PREPA and its creditors do not yield a negotiated agreement, PREPA's existing statutory framework, incorporated into the trust agreement governing PREPA's bonds, would prevent the catastrophe that Petitioners and *amici* predict. The primary remedy available to PREPA's bondholders if negotiations fail and PREPA defaults—at least before the Recovery Act purported to eliminate that remedy—is the appointment of a

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[32] Congress also has recognized this fundamental tenet of municipal restructuring: even in Chapter 9—which the Professor *amici* claim is reflective of Congressional intent to prejudice creditors in the case of municipal distress (Professor Br. 26)—municipalities must first negotiate in good faith with creditors before they can be eligible to seek relief under the Bankruptcy Code. *See* 11 U.S.C. § 109(c)(5)(B). As a result of such negotiations, a number of municipalities have achieved satisfactory resolutions of protracted financial distress without resort to changing applicable laws or restructuring debts in bankruptcy. *See, e.g.*, Sam Roberts, *When New York Teetered on the Brink of Bankruptcy*, N.Y. TIMES (July 25, 2013), *available at* http://tinyurl.com/hub4l5t (describing agreement between New York City and its creditors); Mary Williams Walsh & Jon Hurdle, *Harrisburg Sees Path to Restructuring Debts Without Bankruptcy Filing*, N.Y. TIMES (July 24, 2013), *available at* http://tinyurl.com/h86ch8h (agreement reached between Harrisburg, Pennsylvania and its creditors, avoiding "a costly and contentious trip to bankruptcy court"). Notably, unlike Chapter 9, the Recovery Act does not require that Puerto Rico's municipalities engage in good-faith negotiation with their creditors before seeking protection under the statute. *Compare* Recovery Act § 301 at Pet. App. 243a-44a, *with* 11 U.S.C. § 109(c)(5)(B).

receiver. *See* Trust Agreement § 804, JA 625-26; P.R. Laws Ann. Tit 22 § 207(a); *compare* Recovery Act § 108(b), Pet. App. 200a (eliminating right of bondholders to seek receiver).

The rules governing this remedy under Puerto Rico law reflect a legislative recognition of the fundamental interest PREPA's bondholders have in maintaining (and, in fact, enhancing) PREPA's ability to provide services to Puerto Rico's citizens. A receiver is appointed by, and reports to, a Commonwealth court—not to PREPA's bondholders. P.R. Laws Ann. Tit 22 § 207(a) & (d). The receiver's powers are specifically "limited to the operation and maintenance of [PREPA's energy-generating facilities], and the collection and application of the income and revenues therefrom," and the receiver is expressly prohibited from selling PREPA's assets. *Id.* § 207(e). In other words, even in Petitioners' doomsday scenario, PREPA will continue to operate and provide electricity to its customers, as directed by a receiver answering not to PREPA's creditors, but to a local judge. This is hardly the "chaotic free-for-fall" predicted by Petitioners. Commonwealth Br. 31.[33]

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[33] Although Petitioners and their *amici* argue that, in their doomsday scenario, PREPA would be "unable to secure the credit necessary to make its monthly fuel purchases" (GDB Br. 8-9; PREPA Br. 6), there is literally no support for that speculation. If anything, the opposite is true, since a court-supervised receiver likely would be viewed by PREPA's fuel vendors as a welcome change following PREPA's years of mismanagement. Moreover, a receiver likely would take a number of the actions identified by the District Court to address PREPA's fiscal distress, *see* Pet. App. 138a-139a, most notably by fulfilling PREPA's express statutory and contractual

The existence of this statutory and contractual framework, designed to ensure that PREPA continues to operate while ensuring that PREPA's creditors are treated fairly and are paid in an orderly manner, demonstrates the manifest falsity of the claim of Petitioners and their *amici* that the Court of Appeals' decision striking down the Recovery Act "den[ies] Puerto Rico access to an orderly process of any kind to ease its municipalities' fiscal distress." GDB Br. 1. Just such a process exists, and has existed in Puerto Rico's statutes for more than 70 years.[34]

The benefits of the appointment of a receiver under such circumstances have been proven. *See, e.g.*, DeBonis, *supra* n.7 (noting that panel appointed by Congress was "overwhelmingly successful" in reversing District of Columbia's financial distress and "turn[ing] the city around"). Most recently, the city of Harrisburg, Pennsylvania successfully exited a state receivership after implementing a recovery plan that "[m]unicipal-finance experts said ... could serve as a model for other cities." Kris Maher, *Harrisburg Will Exit State Receivership*, WALL ST. J. (Feb. 26, 2014), *available at*

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obligations to pursue an increase in its base electricity rate (its first since 1989), enabling the receiver to fund PREPA's operations as well as pay its debt service. *See* Walsh, *supra* n.17; Energy Transformation and Relief Act, 2014 P.R. Laws Act No. 57 §§ 3.6, 6B, 6.25(f); P.R. Laws Ann. Tit 22 § 196(l); Trust Agreement § 502, JA 608-11.

[34] Notably, creditors of the Puerto Rico Aqueduct and Sewer Authority (PRASA), another Puerto Rico municipality currently in financial distress, operate under a similar framework. *See* P.R. Laws Ann. Tit 22 § 153 (providing for appointment of receiver).

http://tinyurl.com/gnn6rca. The receiver was appointed in the face of financial distress, after a failed attempt to file bankruptcy; with the receivership complete, the city is expected to have "balanced budgets for the next three years." *Id.*

Similarly, in 2010, a receiver was appointed to oversee the sewer system of Jefferson County, Alabama, which, like PREPA, had faced years of mismanagement that threatened its ability to pay its debt service. *See In re Jefferson County, Ala.*, 474 B.R. 228, 238-40 (Bankr. N.D. Ala. 2012). Although Jefferson County ultimately sought Chapter 9 bankruptcy protection, the court overseeing the case recognized that the receiver provided significant value to the sewer system's creditors *and* its customers: "The evidence indicates that the Receiver has done a much better job during his tenure than was done by the County during the tenures of its former county commissioners." *Id.* At 243. Moreover, the receiver's efforts in negotiations between the County and its stakeholders led to a compromise that would have reduced the system's indebtedness and refinanced its remaining debt, had the county not filed for bankruptcy. *Id.* at 244. Indeed, the path of Jefferson County highlights the misconception advanced by Petitioners and their *amici* that bankruptcy relief is a panacea that will solve all the ills of Puerto Rico's municipalities: nearly three years after emerging from bankruptcy, Jefferson County still has "structural issues" that remain unresolved, and its bonds remain "vulnerable" to default. *See* Darrell Preston, *Memo to Puerto Rico: Alabama County Shows Limits of Bankruptcy*, BLOOMBERG (Dec. 4, 2015), *available at* http://tinyurl.com/jkz7fqc.

As these examples vividly illustrate, even the appointment of a receiver would lead productively toward addressing the interests of all of PREPA's stakeholders in keeping PREPA operating, and serving the people of Puerto Rico. These interests are embodied in the terms of the Trust Agreement and Puerto Rico's receivership law, and are plainly demonstrated by the good-faith negotiations that have followed PREPA's financial distress, and by the consensual restructuring agreement reached as a result of those negotiations.

CONCLUSION

For the foregoing reasons, the judgment of the Circuit Court should be affirmed.

Respectfully submitted,

Marc E. Kasowitz
Counsel of Record
Daniel R. Benson
Hon. Joseph I. Lieberman
Hon. Clarine Nardi Riddle
Andrew K. Glenn
KASOWITZ, BENSON, TORRES
& FRIEDMAN LLP
1633 Broadway
New York, New York 10019
Tel.: (212) 506-1700
Fax: (212) 506-1800
mkasowitz@kasowitz.com

Counsel for Amicus Curiae
The Association of Financial
Guaranty Insurers

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